

## **19.50 Personal Wireless Service Facilities**

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### **19.50.005 User Guide.**

This Chapter contains a variety of regulations and standards that apply to the use and development of *personal wireless service facilities (PWSF)*. If you are operating or are interested in proposing a *PWSF*, you should read this Chapter. [Ord. 265 § 2, 1999]

### **19.50.010 Purpose.**

These standards were developed to protect the public health, safety and welfare, to protect property values and minimize visual impacts while furthering the development of enhanced telecommunication services in Burien. These standards were designed to comply with the Telecommunications Act of 1996. The provisions of this Chapter are not intended to and shall not be interpreted to prohibit or have the effect of prohibiting *personal wireless services*. This Chapter shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent *personal wireless services*. [Ord. 265 § 3, 1999]

### **19.50.015 Exemptions.**

The following are exempt from the provisions of this Chapter and shall be permitted in all zones:

1. Temporary *PWSF* during an emergency declared by the City;
2. Licensed amateur (ham) radio stations;
3. Satellite dish *antennas* less than two meters in diameter when located in *non-residential zones*, and satellite dish *antennas* less than one meter in diameter when located in *residential zones*, including direct to home satellite services, when used as an *accessory use* of the property;
4. *PWSF* which legally existed or had a vested application on or prior to the effective date of this Chapter; except that this exemption does not apply to modifications of such facilities;
5. Routine maintenance or repair of a *PWSF* and related equipment (excluding structural work or changes in height or dimensions of *antennas, support structures or buildings*), provided that compliance with the standards of this Code are maintained. [Ord. 265 § 4, 1999]

### 19.50.020 PWSF Locations and Permit Process.

1. The following table indicates the hierarchy of locations to be used in reviewing an application for a *PWSF*. The *applicant* bears the burden to show that location in a higher priority is not technically feasible. Pursuant to WAC 197-11-800(27), some *PWSF* may require a SEPA Review as part of the review processes outlined below.

Priority (highest to lowest)	Special Review Process (See Chapter 19.65)	Type of PWSF and Location
1	None	A. <i>Collocation</i> of <i>antennas</i> on an existing <i>support structure</i> in a <i>non-residential zone</i> .  B. Attachment of <i>antennas</i> to existing <i>structures</i> in the I, CR, CC-1, CC-2, and SPA-4 zones.  C. <i>Antennas</i> attached to existing or replacement ball field light standards, electrical transmission towers, water tanks or existing utility poles in any zone.
2	Type 1	Attachment of <i>antennas</i> to existing <i>structures</i> (except <i>single detached dwelling units</i> and their <i>accessory structures</i> ) in the O, SPA-1, SPA-2, SPA-3, DC, CI, RM and RS zones.
3	Type 2	Any <i>PWSF</i> not listed above, except for the following which are prohibited: lattice towers in all zones, new <i>monopoles</i> in the DC zone and new <i>monopoles</i> in <i>residential zones</i> .

2. An *applicant* for a Type 2 review for a *PWSF* to be located within a *residential zone* or within 100 feet of a *residential zone* shall demonstrate that the proposed facility cannot be located in a *non-residential zone*, or greater than 100 feet from a *residential zone* and that due to valid considerations including physical constraints, or technological feasibility, no other location is available. The *applicant* is required to demonstrate that it contacted the landowners or owners of *structures* in excess of thirty feet (30') in *height* within a one-quarter mile radius of the proposed *site* (except *single detached dwelling units* and their *accessory structures*), and asked for permission to build the *support structure* or install the *antenna* on an existing *structure*. The information submitted by the *applicant* shall include a map of the area to be served by the facility, field-strength test data (a drive test) of existing coverage quality within the area to be served by the facility, its relationship to other sites in the *applicant's* network (within and outside of Burien city limits), and, an evaluation of existing available land, *buildings* and *structures* taller than thirty feet (30') within one-quarter mile of the proposed *site* [Ord. 385 § 1, 2003, Ord. 265 § 5, 1999]

### 19.50.025 Collocation.

To minimize potential adverse visual impacts associated with the proliferation of *PWSF support structures*, *collocation* of *PWSF antennas* on existing or new *support structures* is encouraged, as follows:

1. *Collocation* shall be accomplished in a manner consistent with the provisions of this Chapter.
2. This subsection applies to both new and existing *PWSF*. The terms and conditions for collocating late-comer providers on collocatable *PWSF* facilities shall be reasonable and based on

current market rates for comparable facilities. Imposition of unreasonable or higher than market rate terms and conditions by the host provider shall be considered failure to cooperate in good faith to accommodate *collocation* with competitors and shall be subject to the provisions of BMC 19.50.025.6 below.

3. The City may deny an application to construct a new *monopole* if the *applicant* has not shown by substantial evidence that it has made an effort to mount the proposed *antennas* on an existing *building* or *support structure* that would provide adequate service to the proposed coverage area. The *applicant* shall use the following *collocation* protocol:

A. Prior to or with an application for approval of a *PWSF*, the *applicant* shall demonstrate that the following notice was mailed via certified mail to all other *PWSF* providers licensed to provide service within the City:

“Pursuant to the requirements of City of Burien Municipal Code Section 19.50.025, (name of wireless provider) is hereby providing you with notice of our intent to submit an application with the City of Burien for construction of a new freestanding personal wireless service facility that would be located at \_\_\_\_\_ (location). In general, we plan to construct a monopole of \_\_\_\_\_ feet in height for the purpose of providing (cellular, PCS, ESMR, etc.) service in the \_\_\_\_\_ frequency range. Please inform us whether you have any existing or planned personal wireless service facilities within one mile of the proposed facility that may be available for possible collocation. If you do not have a facility available for collocation, please indicate whether you would be interested in collocating on our proposed facility. Please provide us with this information within 10 business days after the date of this letter. Your cooperation is appreciated.”

B. Copies of any responses to the *collocation* request letter shall be provided to the City prior to or with the *PWSF* application. If a response to a *collocation* request letter is received by an *applicant* indicating an opportunity for *collocation*, the *applicant* shall make a good faith effort to analyze the feasibility of *collocation*. This analysis shall be submitted with an application for any *monopole* and shall include, at a minimum:

i. A statement from a qualified engineer indicating whether the necessary service can or cannot be provided by *collocation* at the possible *collocation* site.

ii. Evidence that the lessor of the possible *collocation site* either agrees or disagrees to *collocation* on his/her property.

iii. Evidence that adequate space exists or does not exist at the possible *collocation site* to accommodate needed equipment and meet the applicable requirements of this Code.

iv. Evidence that adequate access does or does not exist at the possible *collocation site*

4. To reduce the number of future *support structures* needed in the City, new *support structures* shall be designed to accommodate *antennas* for more than one user, unless the *applicant* demonstrates why such design is not feasible for economic, technical or physical reasons.

5. Unless *collocation* is not feasible, an *applicant's* site plan shall reserve an area for at least one other provider's equipment near the base of the *applicant's* *monopole*. An option agreement to lease the area at the base of the *monopole* for a second provider shall not expire prior to the underlying lease.

6. *Personal wireless service* providers, their lessees and agents shall cooperate in good faith to accommodate *collocation* with competitors, including responding in a timely manner to a collocation

letter required by BMC 19.50.025.3. If a dispute arises about the feasibility of collocating, the *Director* may require a third party technical study, pursuant to BMC 19.50.050, to resolve the dispute. Failure to accommodate *collocation* may be grounds for revocation of permit and removal of the *PWSF* under public nuisance abatement procedures (BMC 8.45). [Ord. 265 § 6, 1999]

#### **19.50.030 Design Criteria.**

1. The location and design of *PWSF* sites shall consider the visual and physical impacts of the facility on the surrounding neighborhood.

2. *PWSF* shall be architecturally compatible with the surrounding *buildings* and land uses and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the *site* and its surroundings.

3. As provided in BMC 19.50.020, new *monopoles* shall be designed to accommodate *collocation*, unless the *applicant* demonstrates why such design is not feasible for economic, technical or physical reasons.

4. Setbacks. The *setback* requirements in this section are not subject to a variance (BMC 19.65.085). The *Director* may waive or reduce the *setback* requirement for a *camouflaged PWSF*.

A. All *monopoles* and all above-ground *equipment enclosures* shall be *setback* at least 10 feet from *property lines*. This *setback* shall be measured from the closest point of the *antenna*, *monopole* and *equipment enclosure* to the *property lines* on the *lot* on which it is located.

B. When located within 100 feet of a *residential zone*, all *monopoles* and above-ground *equipment enclosures* shall be *setback* from the *residential zone* boundary 10 feet plus at least one foot for every one foot of *height* of the *antenna* and *monopole*. This *setback* shall be measured from the closest point of the *antenna*, *monopole* and *equipment enclosure* to the *residential zone* boundary.

C. *Antennas* installed on *building* rooftops shall be *setback* from the edge of the roof at least one foot for each foot of *antenna height* as measured from the top of the roof (or parapet, if one exists) to the highest point of the *antenna*.

5. View corridors. *PWSF* shall be located and designed to not obstruct or significantly diminish views of Mt. Rainier, Puget Sound or the Cascade or Olympic Mountains from public *streets* and public property.

6. Height. The *height* limits in this section are not subject to a variance (BMC 19.65.085).

A. *PWSF* shall not exceed the minimum *height* required to function satisfactorily.

B. *Monopoles* shall not exceed: 100 feet in *height* in the CR and I zones; and 60 feet in *height* in all other zones where *monopoles* are allowed.

C. Whip *antennas* located on existing *structures* shall not be higher than 15 feet above the highest point of the *structure*. Panel *antennas* located on existing *structures*, other than a utility pole, shall not exceed 10 feet above the highest point of the *structure*.

7. Screening.

A. All *PWSF* shall be designed and located on a *site* to take maximum advantage of existing trees, mature vegetation, *structures* and/or topography to screen as much of the facility as possible from view, and so that the facility blends into the background.

B. The visual impacts of *monopoles* and ground-mounted *equipment enclosures* shall be mitigated through installation of a 5' wide Type I landscape strip around the perimeter of the *monopole*, *equipment enclosure* and the outside of the security *fence* (if any). The City may waive or modify this requirement for those sides of the facility that are not visible from *streets* or adjacent property.

C. Landscaping shall be maintained in a healthy, thriving condition. Landscaped areas shall be irrigated either by an irrigation system, or by regular servicing and irrigation by a landscape maintenance company. In the event that landscaping is not maintained as required, the City after giving thirty (30) days advance written notice to the *PWSF* provider and property owner, may maintain or establish the landscaping. Both the *PWSF* provider and property owner shall be billed for such costs until the City is paid.

D. *Equipment enclosures* mounted on a roof shall be screened or have a finish and appearance similar to the exterior *building* walls.

8. Antennas. The requirements in this section are not subject to a variance (BMC 19.65.085).

A. Antennas mounted on buildings. *Antennas* shall be architecturally compatible with the *building* and wall on which it is mounted, and shall be designed and located so as to minimize any adverse aesthetic impact. Panel *antennas* shall not be mounted on a rooftop. A wall-mounted *antenna* shall be as flush to the wall as technically possible and shall not project above the wall on which it is mounted. *Antennas* and any visible mounting brackets and cables shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the *building* and wall on which it is mounted, or otherwise blend into its background. The *antennas* may be attached to an existing conforming mechanical equipment enclosure which projects above the roofline of the *building* but may not project any higher than the enclosure.

B. Antennas mounted on other structures. *Antennas* shall be integrated into the design of the *structure* to which they are attached. *Antenna* platforms are prohibited. External projections from the *structure* shall be limited to the smallest projection technically feasible.

9. Locating on utility poles. The requirements in this section are not subject to a variance (BMC 19.65.085). *PWSF* located on utility poles shall conform to the following design criteria:

A. The utility pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a *PWSF*; provided, that the new pole shall not exceed a height that is a maximum of fifteen (15) feet taller than the existing pole;

B. Panel *antennas* shall not project out from the surface of the utility pole by more than twelve (12) inches, shall not exceed six (6) feet in *height*, and shall be placed such that the top of the panel *antenna* does not extend above the *height* of the utility pole;

C. A cylindrical *antenna* may be mounted as an extension on top of an existing utility pole, but the existing pole shall not be replaced with a taller pole for the purpose of accommodating the cylindrical *antenna*. A cylindrical *antenna* mounted on top of a utility pole shall not exceed eighteen (18) inches in diameter and eight (8) feet in *height*;

D. A whip *antenna* may be mounted as an extension on top of an existing utility pole, but the existing pole shall not be replaced with a taller pole for the purpose of accommodating the whip *antenna*. A whip *antenna* mounted on top of a utility pole shall not exceed fifteen (15) feet in *height*, and shall be enclosed within a cylinder that is painted to match the pole;

E. All *PWSF*, including but not limited to *antennas*, equipment, cables and conduit which are mounted on utility poles shall be painted to match the pole;

F. The visual effect of the *PWSF* on all other aspects of the appearance of the utility pole shall be minimized to the greatest extent possible;

G. The use of the utility pole for the siting of a *PWSF* shall be considered secondary to the primary function of the utility pole. If the primary function of a utility pole serving as the host site for a *PWSF* becomes unnecessary and any regulation requires its removal, the utility pole shall not be retained for the sole purpose of accommodating the *PWSF* and the *PWSF* and all associated equipment shall be removed immediately;

H. *Equipment enclosure(s)* for *PWSF* located on utility poles in *residential zones* shall be located underground, unless an existing *building* other than a single-family residence, such as a garage, which has been in place for at least one year prior to the date of application, is available to accommodate the *equipment enclosure(s)*. *Equipment enclosure(s)* which are located underground may be located within the front *setback* in all zones;

I. In all cases where a utility pole is replaced for the purpose of accommodating a *PWSF* installation, the cables and other wiring necessary for the *PWSF* shall be routed inside the new pole. If routing inside the pole is not allowed by the utility and that determination is confirmed in writing by the utility, then all cable, wiring and conduit routed outside the pole shall be painted to match the pole;

J. There is no *allocation* requirement for *PWSF* located on utility poles and there shall be no more than one (1) *PWSF* located on any one utility pole. *PWSF* located on utility poles shall be located no closer than one thousand (1,000) feet from any other *PWSF* located on a utility pole in a *residential zone*

10. Special Planning Area 3 (Gateway). All new *support structures*, including *monopoles*, and *equipment enclosure(s)* shall be *camouflaged* and the *applicant* shall provide clear and convincing evidence, in a manner as outlined in BMC 19.50.025, that there are no existing *support structures* which will support the proposed new *antennas* in the SPA-3 zone.

11. Downtown Commercial Zone. All new *antennas* in the DC zone shall be located on the following:

A. Any existing *support structure* which has been in place for at least one year prior to the date of application, or

B. Any *building* or *structure* which was not constructed for the sole purpose as a *support structure* for an *antenna*.

All new *antennas*, cables, conduit and *equipment enclosure(s)*, shall be *camouflaged* to protect pedestrian views in the DC zone. Locating *antennas* on utility poles is prohibited in the DC zone.

12. Color. *PWSF* shall have colors generally matching the surroundings or background that minimizes their visibility. In the event that the *FCC* or *FAA* requires special marking, the City may require the *applicant* to request dual mode lighting as an alternative to the marking requirement.



13. Lights, signals and signs. No lights, signals, signs, banners or similar devices shall be permitted on *support structures* or *antennas* unless provided pursuant to BMC 19.50.030.9.

14. Noise. *PWSF* shall comply with applicable State and local noise regulations.

15. Federal requirements. *PWSF* providers and lessees shall assure that its facility complies at all times with current Federal standards. Failure to maintain *PWSF* in compliance with current Federal standards and regulations shall constitute a nuisance. [Ord. 385 § 1, 2003, Ord. 265 § 7, 1999]

#### **19.50.035 Repealed** [Ord. 385 § 1, 2003]

#### **19.50.040 Facility removal.**

1. Prior to issuance of any building or construction permits for a *PWSF* facility, the property owner shall sign an affidavit agreeing to remove the *PWSF* at his or her expense pursuant to this section. The form of the affidavit shall be approved by the City Attorney.

2. In the event the use of any *support structure* or *antenna* will be discontinued for a period of sixty (60) consecutive days, the owner or operator shall so notify the City in writing, and the *support structure* or *antenna* shall thereafter be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and affidavits from the *support structure* or *antenna* owner or operator regarding the issue of *support structure* or *antenna* usage. Upon such abandonment, the owner or operator of the *support structure* or *antenna* or the owner of the property upon which such facility is located shall have an additional sixty (60) days within which to:

A. Reactivate the use of the *support structure* or *antenna* or transfer the *support structure* or *antenna* to another owner or operator who makes actual use of the *support structure* or *antenna*, or

B. Dismantle and remove the *support structure* or *antenna*. If such *support structure* or *antenna* is not removed within said sixty (60) days from the date of abandonment, the City may remove such *support structure* or *antenna* at the facility owner's and property owner's expense. If there are two or more users of a single *support structure*, then this provision shall not become effective until all users cease using the *support structure*.

At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval for the *support structure* or *antenna* shall automatically expire. [Ord. 265 § 9, 1999]

#### **19.50.045 Application Requirements.**

The City shall decide upon a complete *PWSF* application within a reasonable period of time (pursuant to BMC 19.65), taking into account the nature and scope of the request. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

All applications to locate a *PWSF* shall be submitted to the City with the applicable requested information (depending upon the type of facility which is involved). A detailed plan that complies with the submittal requirements of this Chapter, and other regulations and ordinances of the City, along with other pertinent information requested by the City shall also be submitted. An *applicant's* submission may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information depending upon the type of facility which is involved:

1. A scaled site plan clearly indicating the location, type and *height* of the proposed *support structure*, *antennas*, on-site land uses and zoning, adjacent land uses and zoning, adjacent *streets*, proposed means of access, and *setbacks* from *property lines* and *residential zones*. The City may waive or modify the requirement for a full, detailed site plan if the *antenna* is to be mounted on an existing *structure*.
2. Scaled elevation drawings of the proposed *support structure* and *equipment enclosure*.
3. Photosimulations of the proposed facility from public *rights-of-way*, *public properties* and affected *residentially-zoned* properties.
4. Legal description of the *lot*, if applicable.
5. Approximate distance between the proposed *antennas* and the nearest *residentially zoned* property.
6. A landscape plan showing size, type, and location of specific landscape, screening and fencing materials.
7. Manufacturers information indicating compliance with adopted noise standards.
8. The City may require submittal of propagation maps showing that the proposed *PWSF* is required for network coverage in order to satisfy the requirements of the provider's grid system. The maps shall also demonstrate that the requested *height* is the minimum *height* necessary for the *support structure* and *antennas*, as applicable. The maps shall show the neighboring or regional facilities with which the facilities in the City can communicate. The City may require additional propagation maps showing coverage areas at lower heights. See also BMC 19.50.025.2 if the proposed *PWSF* is in or within 100 feet of a *residential zone* [Ord. 265 § 10, 1999]

#### **19.50.050 Third Party Review.**

In certain instances there may be a need for expert review by a third party of the technical data submitted by the *PWSF applicant*. The City may require such a technical review, to be paid for by the *PWSF applicant*. The selection of the third party expert may be by mutual agreement between the *applicant* and the City, or at the sole discretion of the City. Such mutual agreement not to be unreasonably withheld by either party. The third party expert shall have recognized training and qualifications in the field of radio frequency engineering or structural engineering, as appropriate. The expert review is intended to be a site-specific review of technical aspects of the *personal wireless services* facilities and other matters as described herein, and not a subjective review of the *site* selection. In particular, but without limitation, the expert shall be entitled to provide a recommendation on the height of the proposed facilities relative to the *applicant's* coverage objectives and system design parameters, or the structural requirements for accommodating *collocation*. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the City or other interested parties. Based on the results of the third party review, the City may require changes to the application for the *PWSF* that comply with the recommendations of the expert. [Ord. 385 § 1, 2003, Ord. 265 § 11, 1999]

#### **19.50.055 Bonds.**

1. Prior to issuance of any construction permits for the proposed *PWSF*, the *applicant* shall submit a completion bond, or equivalent financial security, equal to 150% of the cost of installation of *site improvements* associated with the *PWSF*.



2. Prior to final inspection of the project, the *applicant* shall submit a landscape maintenance bond, or equivalent financial security, equal to 100% of the cost of the landscaping and irrigation installation. The length of the bond, or equivalent financial security, shall cover the first two growing seasons following installation of the landscaping. The City may waive the bond, or equivalent financial security, requirement if the *applicant* submits a copy of a valid contract with a landscaper or landscape maintenance firm to maintain and replace the landscaping as required in this section. [Ord. 385 § 1, 2003, Ord. 265 § 12, 1999]

**19.50.060 Other wireless communication facilities.**

All of the provisions of this Chapter, which address *personal wireless services* and *personal wireless service facilities*, shall also be deemed to cover other wireless communications facilities (and, in particular, but without limitation, television and AM/FM radio towers) to the maximum extent allowed by law. [Ord. 265 § 13, 1999]

**19.50.065 Conflict.**

To the extent that any provisions of this Chapter are inconsistent or in conflict with any other provision of the Zoning Code, Comprehensive Plan or any ordinance or regulation of the City, the provisions of this Chapter shall be deemed to control. [Ord. 265 § 14, 1999]